WP(C) 6282/2007

BEFORE

HON'BLE MR JUSTICE AMITAVA ROY

Heard Mr AS Choudhury, learned Senior counsel for the petitioner. Al so heard Mr Gani, learned Central Govt. Standing counsel and Mr P.Roy, learned State counsel.

After hearing the learned counsel for the parties and on a consideration of the pleaded facts supported by an affidavit, I intend to dispose of this pet ition at the motion stage.

The facts in brief, necessary for the decision proposed are that ,on a r eference made by the Superintendent of Police , Barpeta, Reference Case No.3156/ 97 under the Illegal Migrants Determination Tribunal Act,1983 (IMDT), was regi stered against the petitioner on the allegation that she had illegally migrated to the State of Assam after 25.3.1971. Eventually, the proceeding was transferr ed to the file of Foreigners Tribunal -III, Barpeta and accordingly FT Case No. 31(III)/07 was registered fixing 24.7.2007 as the date of appearance of the pet itioner. The petitioner has averred before this Court that as she fell to menta l derangement thereafter and was deprived of her sense of understanding, she co uld not pursue her defence before the learned Tribunal. In this petition she has disclosed the facts regarding her treatment and the period of her ailment. The medical documents as Annexures-5 and 6 have also been appen ded to the petition which prima facie bear out her contention and indicate that as on date, she is mentally well to contest the proceeding if an opportunity is granted.

A bare perusal of the judgment of the learned Tribunal impugned before t his Court reveals that the petitioner had absented before it and that the conc lusions recorded therein are founded on the materials adduced before it exparte.

Mr Choudhury has urged that as the petitioner was prevented by a disabl ing disease from pursuing her defence in the proceeding before the learned Tri bunal, it is necessary in the interest of justice ,that the impugned judgment an d order be quashed and she may be provided an opportunity of effectively defendi ng the charge levelled against her.

The learned counsel for the respondents however, submits that the petiti oner having been provided all opportunities throughout the proceeding and it be ing not her case that there was no adult member in the family to take necessar y steps in the case before the learned Tribunal, no interference with the impug ned judgment and order is called for.

After hearing the learned counsel for the parties and on a consideration of the pleaded facts as well as the documents on record, more particularly the certificate of the attending doctor endorsing the petitioner's ground of illness during the relevant period, I am of the view that in the interest of justice, t he petitioner's grievance ought to be entertained. This is more so, in view of serious adverse consequences that would visit her if the impugned judgment and order is allowed to stand .

On a totality of the considerations as above, the impugned judgment and order dated 26.10.2007 passed by the Foreigners Tribunal-III , Barpeta in FT Cas e No.31(III)/07 (Reference case No.3156/97) is interfered with and is hereby se t aside. The matter stands remitted to the learned Tribunal for fresh disposal o n merits.

Mr Choudhury has submitted that the petitioner is presently in a fit s tate to contest the proceeding. It is, therefore, ordered that the petitioner would appear before the Tribunal on 21.01.2008 to take further orders. On her a ppearance, the learned Tribunal would afford her an opportunity to adduce evide nce oral and documentary and would dispose of the proceeding thereafter in acc ordance with law.

The petition stands closed in the above terms. No costs.